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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 96 1471

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UNITED STATES OF AMERICA

Plaintiff,

Civil Action
No.

- against -

175 INWOOD ASSOCIATES,
175 ROGER CORP., ABRAHAM WOLDIGER,
ABRAHAM TAUB, and
PETER (PINCHAS) HOFFMAN,

HURLEY, J.
BOYLE, M.

Defendants.

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Plaintiff, UNITED STATES OF AMERICA, by its attorney ZACHARY W. CARTER, United States Attorney for the Eastern District of New York, STANLEY N. ALPERT, Assistant United States Attorney, of counsel, by the authority of the Attorney General, acting at the request of the United States Environmental Protection Agency ("EPA"), for its complaint against defendant herein alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604(e)(5)(B), 9606(b)(1) and 9607(a), for civil penalties and reimbursement of costs incurred by the United States in response to releases and threatened releases of hazardous substances into the environment at the Rockaway Metal Products Site ("the Site")

located at 175 Roger Avenue, Inwood, Nassau County, New York. The Site is located in an industrial, commercial and residential area, and is within 100 feet of Jamaica Bay.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to CERCLA §§ 106(b)(1) and 113(b), 42 U.S.C. §§ 9606(b)(1) and 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to CERCLA § 113(b), 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1355 and 1391, because the CERCLA violations occurred within the Eastern District of New York.

DEFENDANTS

4. 175 Inwood Associates ("Inwood") is a limited partnership organized under the laws of the State of New York and was the owner of the Site at the time of disposal of hazardous substances at the Site.

5. 175 Roger Corp. ("Roger") is a corporation organized under the laws of the State of New York that has owned the Site since June of 1993 and is current owner of the Site.

6. Abraham Woldiger ("Woldiger") is a general partner of Inwood and is an officer and/or director of Roger.

7. Peter (Pinchas) Hoffman ("Hoffman") is a general partner of Inwood and is an officer and/or director of Roger.

8. Abraham Taub ("Taub") is a general partner of Inwood and is an officer and/or director of Roger.

9. On information and belief, Roger is owned by defendants Woldiger, Hoffman and Taub.

10. Each defendant is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY AND REGULATORY BACKGROUND

11. CERCLA establishes a comprehensive program for the remediation and cleanup of sites at which hazardous substances have been released or threaten to be released into the environment.

12. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), authorizes the United States to recover from liable parties all costs of removal or remedial action the United States has incurred that are not inconsistent with the National Contingency Plan ("NCP").

13. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines the term "release" to include, among other things, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and includes the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant. Section 101(14), 42 U.S.C. § 9601(14), defines "hazardous substance."

14. The Site falls within the definition of a facility under § 101(9) of CERCLA, 42 U.S.C. § 9601(9), which includes "any building, structure . . . or . . . any site or area where a

hazardous substance has been deposited, stored, disposed of, or placed, or otherwise came to be located."

15. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes EPA to issue such unilateral administrative orders as maybe necessary to protect the public health and welfare and the environment when EPA has determined that there maybe an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened release of a hazardous substance from a facility.

16. Section 106(b)(1), 42 U.S.C. § 9606(b)(1), authorizes the United States to recover a penalty of not more than $25,000 per day against any person who without sufficient cause, willfully violates or fails or refuses to comply with a Section 106(a) order.

17. Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), authorizes EPA to require that certain information be provided to it by any person for the purposes of determining the need for response, choosing or taking any response action under CERCLA.

18. Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3), authorizes EPA and its representatives to enter any property where hazardous substances may be or have been generated, stored, disposed, released, threatened to be released, or where entry is needed to determine the need for response or to carry out a response action.

19. Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), authorizes the United States to recover civil penalties not to exceed $25,000 per day for each day of noncompliance with EPA's requests for information or for access to property pursuant to Sections 104(e)(2) or (3).

DEFENDANTS' STATUS UNDER CERCLA

20. Defendants Inwood, Taub, Woldiger, and Hoffman were the owners and operators of the Site at the time that hazardous substances were disposed of on the Site within the meaning of § 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

21. Defendants Roger, Taub, Woldiger, and Hoffman are the owners and operators of the Site within the meaning of § 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

SITE BACKGROUND

22. From 1987 through May 1989, Rockaway Metal Products, Inc. ("Rockaway") leased the Site, where it manufactured and spray painted bathroom partitions. Inwood took title to the Site in January 1989, and the lease was assigned to Inwood.

23. Rockaway left the Site in May 1989, leaving behind approximately 150 to 250 drums, 22 pressurized cylinders, a tanker-trailer and 4 underground storage tanks, containing hazardous substances. Approximately 2,000 gallons of flammable waste, in addition to lead-based paint sludge and petroleum solvents, were found in these containers. Some of the abandoned 55 gallon drums were deteriorated, and the contents of some of

the drums leaked out of the drums. The tanker-trailer was in poor condition, threatening a release. In addition, sampling results indicated that low levels of volatile organic compounds and metals are present in dry wells and groundwater located at the Site.

24. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), identified at the Site include benzene, toluene, ethylbenzene, xylene, cadmium, chromium and lead.

25. Rockaway filed for a reorganization pursuant to Chapter 11 of the Bankruptcy Code in or around 1987. On information and belief, Rockaway is no longer in business.

26. On November 20, 1989, the Nassau County Department of Health ("NCDOH"), pursuant to a request it received from the Nassau County Police Department Emergency Services Bureau, inspected the Site and took samples. The results indicated that hazardous substances, including toxic and flammable wastes, were present at the Site. Accordingly, the NCDOH notified Inwood of the results of its Site inspection and ordered Inwood to clean up the Site. Inwood did not comply with NCDOH's demand.

27. After unsuccessful efforts to get Inwood to undertake the removal work, NCDOH referred the Site to the New York State Department of Environmental Conservation ("NYSDEC") in a letter dated August 8, 1991.

28. In a letter dated May 13, 1992, NYSDEC sought to have Inwood voluntarily clean up the Site. Inwood responded, in

a letter dated May 26, 1992, that it needed additional time before performing the necessary cleanup due to a pending foreclosure.

29. On June 5, 1992, NYSDEC referred the Site to EPA. On June 15, 1992, EPA inspected the Site and gathered samples for analysis. As a result of the information obtained from both NCDOH's and EPA's inspections and samplings, EPA determined that the release and threat of release of hazardous substances into the environment at and from the Site may present an imminent and substantial endangerment to the public health and welfare and the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). EPA requested that Inwood do the necessary removal work. Inwood, did not agree to voluntarily perform the necessary removal action.

30. On June 29, 1992, EPA sent a Notification of Potential Liability and Request for Information letter to Inwood which requested information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). To date, Inwood has sent only partial responses to this request. Inwood's responses to the June 29, 1992 Information Request did not include, among other things, financial information relating to the ability of Inwood to pay for the cleanup requested by EPA, which request was authorized by CERCLA § 104(e)(2)(C).

31. EPA determined that the Site presented an imminent and substantial endangerment to the public health and welfare and the environment.

32. As Inwood would not voluntarily undertake the necessary removal action, on September 30, 1992, EPA unilaterally issued Administrative Order Index Number II-CERCLA-20224 ("UAO") to Inwood, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring it to perform the necessary removal action. With an extension of time requested by Inwood, the UAO became effective on October 19, 1992.

33. The UAO required Inwood to perform a removal action which included the overpacking of all deteriorated drums containing liquid material, transferring the liquid contents of the tanker-trailer to a stable container, the off-Site disposal of approximately 250 drums, the disposal of all other hazardous substances present at the Site, and the sampling of drywells, underground storage tanks, soils and monitoring wells for the purpose of determining if hazardous substances were present.

34. On December 3, 1992, EPA sent a notice of failure to comply to defendants. On December 14, 1992, EPA held a meeting at its Region II offices to discuss with defendants their continued failure to comply with the UAO.

35. As of February 1993, Inwood still had failed to perform the removal action required by the UAO. EPA issued an Action Memorandum for the Site on February 5, 1993 which authorized EPA to spend Superfund monies to conduct the removal action itself. In addition, pursuant to Sections 104(e)(1) and (e)(3) of CERCLA, 42 U.S.C. §§ 9604(e)(1) and (e)(3), EPA requested access to the Site from defendants Inwood and Woldiger

by letter dated February 23, 1993. Defendants did not grant that request for access.

36. On April 7, 1993, pursuant to Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA sent Request for Information letters to Woldiger, Hoffman and Taub, the general partners of Inwood. EPA did not receive a response to these Requests for Information.

37. On April 12, 1993, pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), EPA issued Administrative Order Index Number II-CERCLA-104-93-0201 ("Access Order") to defendants Inwood and Woldiger directing compliance with EPA's request for access. Inwood and Woldiger failed to comply with the Access Order.

38. On April 19, 1993, Inwood finally submitted a Site Operation Plan ("SOP") to EPA, as the UAO required. Ultimately, after Inwood took more time than was allowed by the UAO to revise the SOP, EPA accepted Inwood's SOP and Inwood performed the removal action.

39. On June 29, 1993, following a mortgage foreclosure action against the Site, the Federal Deposit Insurance Corporation conveyed title to the Site to 175 Roger Corp.

40. On September 9, 1994, EPA sent a letter to Inwood, Woldiger, Hoffman and Taub demanding reimbursement of EPA's Site response costs, then totalling approximately $40,000, and also requested payment of civil penalties for violations of the UAO, EPA's information requests and EPA's request for access.

41. On September 16, 1994, EPA sent a demand letter to 175 Roger Corp., the present owner of the Site, seeking reimbursement of Site response costs. Subsequent to September 1994, EPA incurred additional response costs, bringing the total to in excess of $98,000, and in January 1996 EPA wrote to defendants' counsel seeking reimbursement.

FIRST CLAIM FOR RELIEF

(Cost Recovery)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. Defendants Inwood, Taub, Woldiger, and Hoffman were the owners and operators of the Site at the time that hazardous substances were disposed of on the Site within the meaning of § 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

44. Defendants Roger, Taub, Woldiger, and Hoffman are the owners and operators of the Site within the meaning of § 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

45. There was a release or threat of release of hazardous substances at the Site.

46. The Site is a facility as defined by CERCLA Section 101(9), 42 U.S.C. § 9601(9).

47. The United States has incurred response costs as a result of the release or threat of release of hazardous substances into the environment.

48. Defendants are liable for all costs of removal or remedial action incurred by the United States, plus interest from

the date payment was demanded under CERCLA § 107(a), 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF

(Failure to Timely Comply with the UAO)

49. Paragraphs 1 through 48 are realleged and incorporated by reference herein.

50. Defendants refused to comply with EPA's CERCLA § 106(a) UAO, commencing October 19, 1992, the effective date of the UAO after Inwood sought and received an extension of time to comply. Inwood engaged in a series of violations of the UAO, as set forth herein.

51. Paragraph 75 of the UAO, with the extension of time granted by EPA, required Inwood to submit to EPA written notice of its intent to comply with the UAO by October 23, 1992. Inwood failed to submit the required Notice by that date.

52. Inwood submitted a written notice of intent to comply to EPA on November 3, 1992. Inwood was in noncompliance with paragraph 75 of the UAO for 11 days.

53. Paragraph 16 of the UAO, with the extension of time granted by EPA, required expedited Site stabilization measures to be performed by October 26, 1992. Paragraph 16 required Inwood to overpack all deteriorated drums containing liquid material, transfer the tanker-trailer's contents to a stable container, stage all pressurized cylinders inside a building, and establish Site security.

54. Inwood failed to commence Site stabilization measures until November 9, 1992, 14 days after they were required. Inwood did not complete the required Site stabilization measures until on or about November 27, 1992, 18 days later.

55. Paragraph 30 of the UAO required Inwood to submit to EPA a certification that Inwood's contractors had adequate insurance coverage, at least seven days prior to commencing any work, which meant not later than November 2, 1992. Although work commenced on November 9, 1992, Inwood failed to submit the insurance certification until December 14, 1992, a violation of the UAO that continued for 42 days.

56. Paragraph 21 of the UAO required a Health and Safety Plan satisfying certain legal requirements, including that workers be certified by the Occupational Health and Safety Administration ("OSHA") to handle hazardous wastes. Paragraphs 29 and 52 of the UAO required Inwood to use properly qualified persons and to perform the cleanup work in accordance with applicable law. Inwood started cleanup measures on November 9, 1992, but failed to provide EPA with the OSHA certifications. Inwood performed work at the Site with workers who were not OSHA certified. Despite EPA requests, OSHA certifications were not submitted to EPA until December 14, 1992, 35 days after the commencement of work on November 9, 1992, in violation of the UAO.

57. Paragraph 32 of the UAO required biweekly progress reports fully describing Inwood's cleanup actions during implementation of the UAO. Implementation of the UAO by Inwood commenced on November 9, 1992. Inwood failed to provide the first biweekly report until about December 30, 1992, and was immediately out of compliance with this requirement of the UAO for 37 days. Inwood failed to present another biweekly report until August 1, 1993, and subsequently failed to produce reports except for ones dated December 10, 1993, August 19, 1994, and November 2, 1994. Inwood was thus out of compliance with paragraph 32 of the UAO for hundreds of days.

58. Paragraph 17 of the UAO, with the extension of time granted by EPA, required Inwood to submit a Site Operations Plan ("SOP") to EPA not later than November 18, 1992. In a meeting with EPA on December 14, 1992, Inwood agreed to provide EPA with a SOP by December 24, 1992. Inwood failed to submit the SOP to EPA until April 19, 1993. Inwood's violation of paragraph 17 of the UAO continued for 152 days after the due date.

59. Paragraph 37 of the UAO provided that, in the event that Inwood's performance of the UAO caused or threatened to cause a release of a hazardous substance or presented an immediate threat to public health or welfare or the environment, Inwood was required to take immediate action to prevent the threat, and to notify EPA immediately and take action in consultation with EPA. On an unknown date, Inwood placed approximately 25 drums containing highly flammable wastes within

fifty feet of its own tenant's offices. Inwood failed to consult with EPA or to notify EPA regarding this action. EPA discovered the drums of flammable material in an unsafe location adjacent to the tenants on April 7, 1993. Inwood promised to remove the drums by April 12, 1993, but failed to do so. On April 15, 1993, EPA wrote to Inwood, stating again that Inwood was in violation of another provision of the UAO, and enclosing the April 12, 1993 Access Order so that EPA could abate the hazard. The drums were finally moved by Inwood to a safe location on April 22, 1993. Inwood was in violation of Paragraph 37 of the UAO from some time before April 7, 1993 until April 22, 1993, in excess of 15 days.

60. Pursuant to § 106(b)(1) of CERCLA, civil penalties of not more than $25,000 per day for each day of noncompliance may be assessed against any person who, without sufficient cause, willfully violates, or fails or refuses to comply with a § 106(a) Administrative Order.

61. Defendants are liable to plaintiff for civil penalties of not more than $25,000 per day for each day that they were in violation of the UAO as outlined above.

THIRD CLAIM FOR RELIEF

(Failure to Comply with Access Order)

62. Paragraphs 1 through 61 are realleged and incorporated by reference herein.

63. Based on inspections of the Site and the sampling and analysis of wastes at the Site, EPA had a reasonable basis to

believe that there may have been a release or threat of release of a hazardous substance, pollutant or contaminant at the Site.

64. Pursuant to Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), EPA sought entry to the Site from Inwood and Woldiger for purposes of determining the need for response, or choosing or taking any response action under CERCLA, or otherwise enforcing CERCLA.

65. EPA was authorized to enter the Site pursuant to § 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

66. Defendants Inwood and Woldiger unreasonably failed to comply with EPA's CERCLA § 104(e)(3) request for access to the Site and EPA's CERCLA § 104(e)(5) Access Order. This noncompliance was continuous from the effective date of the February 23, 1993 written demand for access, which was March 2, 1993, until April 19, 1993, when defendants provided the Site Operation Plan which indicated that defendants would commence the work themselves instead of granting EPA access.

67. Pursuant to § 104(e)(5)(B) of CERCLA, civil penalties not to exceed $25,000 per day, for each day of noncompliance, may be assessed against any person who unreasonably fails to comply with a request for access issued pursuant to Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3) or with a CERCLA § 104(e)(5) Access Order.

68. Defendants are liable to plaintiff for civil penalties not to exceed $25,000 per day, for each day from March

2, 1993 through April 19, 1993 for their failure to comply with EPA's request for access and EPA's Access Order.

FOURTH CLAIM FOR RELIEF

(Failure to Timely Comply with Information Requests)

69. Paragraphs 1 through 68 are realleged and incorporated herein by reference.

70. Pursuant to Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA issued an Information Request to Inwood on June 29, 1992, and issued Information Requests to Woldiger, Taub and Hoffman on April 7, 1993, which requested information and documents relating to the Site, as authorized by Section 104(e)(2) of CERCLA.

71. The information requests were issued for determining the need for response or choosing or taking any response action under CERCLA, or otherwise enforcing CERCLA.

72. Defendants were given reasonable notice of the Information Requests.

73. Defendants failed to comply in a timely manner and never fully complied with the Requests.

74. Pursuant to § 104(e)(5)(B) of CERCLA, civil penalties not to exceed $25,000 per day for each day of noncompliance may be assessed against any person who unreasonably fails to comply with a CERCLA § 104(e)(2) Information Request.

75. Defendants have unreasonably failed to comply with EPA's CERCLA § 104(e)(2) Information Requests.

76. Defendants each are liable to plaintiff for civil penalties not to exceed $25,000 per day, for each day, beginning June 29, 1992 until the date when the information and documents requested are completely provided.

77. Defendants Woldiger, Taub and Hoffman each are liable to plaintiff for civil penalties not to exceed $25,000 per day, for each day, beginning April 7, 1993 until the date when the information and documents requested are completely provided.

RELIEF REQUESTED

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

1. Award to the United States the response costs it has incurred, in excess of $98,000, plus interest that has accrued on these costs since reimbursement was demanded, as authorized by CERCLA § 107(a), 42 U.S.C. § 9607(a); and

2. Assess fines and civil penalties against defendants pursuant to CERCLA § 106(b)(1), 42 U.S.C. § 9606(b)(1), and CERCLA § 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), not to exceed $25,000 for each day of noncompliance with EPA's Unilateral Administrative Order dated September 30, 1992, not to exceed $25,000 for each day of noncompliance with EPA's request for access dated February 23, 1993 and Access Order dated April 12, 1993, and not to exceed $25,000 for each day of noncompliance with EPA's Requests for Information dated June 29, 1992 and April 7, 1993, and order defendants to pay the fines and civil penalties;

3. Award to the United States the costs of this action, and grant such other relief as is just and appropriate.

Dated: Washington, D.C.

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Dated: Brooklyn, New York
March 29, 1996

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